



AFL-CIO

AMERICA'S UNIONS

**American Federation
of Labor and
Congress of Industrial
Organizations**

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November 22, 2021

NLRB FOIA Officer
National Labor Relations Board
1015 Half Street, S.E. 4th Floor
Washington, D.C. 20570
Facsimile: (202) 273-FOIA (3642)

Re: Request for Records under FOIA

Dear NLRB FOIA Officer:

The AFL-CIO, a voluntary federation of 56 national and international labor unions, submits the following requests for documents under the Freedom of Information Act (FOIA), 5 U.S.C. § 522.

We ask that the following documents be made available no later than December 22, 2021. The AFL-CIO anticipates utilizing the provided information to inform future filings with the Board in order to enhance the Board's decision-making.

Requests

1. Any document containing or evidencing:
 - a) a voluntary recognition notice filed with the NLRB (including its Regions) pursuant to the procedures established under § 103.21 of the Board's Rules and Regulations,
 - b) the posting of any notice issued pursuant to the filing of a voluntary recognition notice,
 - c) a petition for an election filed pursuant to the window period established under § 103.21,
 - d) the disposition of any such petition, e) the outcome of any election held pursuant to such a petition, or
 - e) any compilations or analyses of any kind of such notices, postings, or elections.
2. Any document containing or evidencing for the period between FY 2011-2020:
 - a) the holding of a rerun election conducted by the NLRB (including its Regions),

- b) a requirement to conduct a rerun election, including, but not limited to, orders of the Board, ALJDs to which no exceptions were filed, Regional Director decisions that were not appealed to the Board, or settlement agreements,
- c) the final tally of ballots for any such rerun election, and the final tally of ballots for the initial election, or
- d) any compilations or analyses or any kind of such rerun elections.

Fee Waiver

For purposes of determining fees associated with processing our FOIA request, please be advised that the AFL-CIO is an “other” requester under the NLRB Rules and Regulations, Section 102.117(d)(2). Although “other” requesters are charged only for searches and photocopying (with no charge for the first two hours of search time or for the first 100 pages of photocopies), we request that any fees associated with processing our request be waived pursuant to NLRB Rules and Regulations, Section 102.117(d)(2)(vi). Under that section, “[d]ocuments are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requestor.” *Id.*; 5 U.S.C. § 552(4)(A)(i)).

We address the two requirements applied by the Board to determine whether the AFL-CIO qualifies for a fee waiver: 1) the public interest requirement and 2) whether disclosure of the information is not primarily in the requester’s commercial interest.

In relation to the public interest requirement, the requested documents specifically concern identifiable operations or activities of the government. In particular, the requested documents concern the operation of the Board’s newly-adopted § 103.21, as well as its conducting of rerun elections. The AFL-CIO anticipates that the requested documents will be used by it to provide meaningful input to the Board in future proceedings, either through *amicus* briefs or in comments submitted in a rulemaking proceedings.

The AFL-CIO intends to use the requested documents on behalf of its affiliated national and international unions, their local unions, and the employees they represent and who wish to be represented by them. The requested documents will enrich our critical and unique contribution to future Board’s deliberations and the public understanding of the Board’s operations.

In relation to the requested documents not being primarily in our commercial interest, the AFL-CIO has no commercial interest in the documents. We will not trade in the documents or use the documents to further any commercial transactions. We seek the documents *solely* for use in studying the operations of § 103.21 and rerun elections, which we anticipate will inform future submissions to the Board that will enhance the Board’s own decision-making. While the information sought is of interest to our affiliated national and international unions and their locals and members, we do not believe that this is the type of commercial interest contemplated by Congress under FOIA. But, even if it is, it is extremely attenuated as attributed to the AFL-

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CIO in this situation and clearly outweighed by the public interest identified and explained above.

Please let me know if additional information is needed to process our request for documents and a fee waiver, or if you have any questions regarding our requests.

Thank you for your timely attention to this matter.

Sincerely,

/s/Maneesh Sharma

Maneesh Sharma

Associate General Counsel

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/mg